

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

HEARTS ON FIRE COMPANY, LLC,

Plaintiff,

v.

EIGHTSTAR DIAMOND COMPANY and GRS  
JEWELERS, INC.,

Defendants.

CIVIL ACTION NO. 04 12258-JLT

**PLAINTIFF HEARTS ON FIRE COMPANY, LLC'S PARTIAL  
WITHDRAWAL OF ITS MOTION TO DISMISS WITH RESPECT TO  
COUNT ONE OF EIGHTSTAR DIAMOND COMPANY'S COUNTERCLAIMS**

Plaintiff Hearts On Fire Company, LLC ("HOF") hereby partially withdraws its pending Motion to Dismiss with respect to Count One of Defendant EightStar Diamond Company's ("EightStar") Counterclaims, which seeks a declaration that the two trademarks involved in this action are not registrable. HOF's motion with respect to Counterclaim Count One is now moot. Specifically, HOF had argued that jurisdiction over registrability was lacking because none of HOF's applications to register the trademarks involved in this action had issued. Accordingly, there was no "registered mark" involved in this action as required by 15 U.S.C. § 1119. However on May 31, 2005, Registration Nos. 2956851, 2956852, 2956853, and 2956854 issued with respect to each of the two trademarks at issue in this proceeding.

HOF continues to rely upon its pending Motion to Dismiss with regard to EightStar's Counterclaim Count Two.

WHEREFORE, HOF partially withdraws its Motion to Dismiss with respect to Count One of EightStar's Counterclaims.

HEARTS ON FIRE COMPANY, LLC

By its attorneys,

/s/ Mark Robins

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